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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment to the Commission's)
Regulatory Policies Governing) IB Docket No. 95-41
Domestic Fixed Satellites and)
Separate International Satellite)
Systems)

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COMMENTS OF COMSAT CORPORATION

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SUMMARY

COMSAT supports the Commission's proposal to allow domsats and separate systems to provide both domestic and international services, provided that the same regulatory treatment is extended to COMSAT. All U.S. satellite service providers, including COMSAT World Systems and COMSAT Mobile Communications, should be allowed to meet all of their customers' needs in the most efficient and cost-effective way possible. Allowing COMSAT to provide both international and domestic services will improve efficiency, increase consumer choice, and further each of the other public interest goals identified in the NPRM. Moreover, COMSAT would be placed at a severe competitive disadvantage if it were the only satellite operator not permitted to offer both types of service.

COMSAT also supports the Commission's proposal to let satellite operators decide for themselves whether to provide common carrier services or non-common carrier services. However, the regulatory classification applicable to a given service provider must, as a matter of law, be determined by the manner in which its service is actually offered. An operator cannot provide common carrier services and yet "elect" to be regulated as a non-common carrier.

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COMMENTS OF COMSAT CORPORATION

COMSAT Corporation ("COMSAT"), through its COMSAT International Communications and COMSAT Mobile Communications lines of business, hereby submits these initial comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹

I. INTRODUCTION

In its NPRM, the Commission proposed to eliminate the current distinction between its Transborder policy and its Separate International Satellite Systems ("Separate Systems") policy, and to permit all U.S.-licensed fixed satellites to provide U.S. domestic and international services on a co-primary basis, thereby enhancing competition by increasing the amount of satellite capacity available for both domestic and international usage. NPRM at 2. The Commission tentatively concluded that it would be in the public interest to eliminate the Transborder

¹Notice of Proposed Rulemaking, FCC 95-146, released April 25, 1995.

policy in its entirety and to allow all U.S. domestic fixed-satellite licensees to provide international services on the same basis as U.S. separate system licensees. Id. at 9, 10. The Commission recognized, however, that to stop there would give domsats a competitive advantage over separate systems. Accordingly, the agency also tentatively concluded that the Separate Systems policy should be modified to eliminate the provision allowing separate systems to provide domestic services only on an ancillary basis. Id. at 11.

The Commission reasoned that "permitting all operators to provide the widest range of service offerings" would allow them to use their satellites more efficiently and would encourage them to offer more innovative and customer-tailored services. Id. at 11. This in turn would benefit consumers by increasing their service options, lowering prices, and facilitating the creation of a global information infrastructure (GII). Id. The Commission also predicted that its proposed policy change would help to alleviate shortages of space segment capacity in the event of future launch failures. Moreover, it would give satellite providers the flexibility to design systems that are most responsive to customer needs and changing market conditions. Id. For all these reasons, the Commission concluded that there is no longer any reason to impose artificial geographic limitations on the providers of either domestic or international satellite services. Id. at 11, 19.

Surprisingly, in light of the foregoing analysis, the Commission reached no tentative conclusion as to whether COMSAT should be permitted to provide U.S. domestic service using INTELSAT. Similarly, the Commission reached no conclusion as to whether Inmarsat should be used to serve the U.S. market. However, it did request comment on those issues. Id. at 18.

II. COMSAT WORLD SYSTEMS SHOULD BE ALLOWED TO PROVIDE BOTH INTERNATIONAL AND DOMESTIC SERVICES

COMSAT supports the Commission's decision to eliminate the artificial barrier between its Transborder and Separate Systems policies on the condition that COMSAT is also allowed to provide both domestic and international service. As the NPRM points out, since these policies were developed in the 1980s, there has been an increasing trend toward a globalized economy -- and with it an increasing desire for "one-stop" shopping, particularly by multinational corporations. NPRM at 9. Users whose communications requirements were once wholly domestic now find that they need international space segment capacity as well -- and the reverse is also true. Under these circumstances, there is simply no reason why U.S. satellite service providers should not be allowed to meet all of their customers' needs in the most efficient and cost-effective way possible.

What is true for domsats and separate systems applies with equal force to COMSAT, and the Commission's new policy therefore

should apply to COMSAT as well. In particular, allowing COMSAT World Systems to provide both international and domestic services via INTELSAT will further each and every one of the goals expressed in the NPRM.

- It will improve satellite efficiency by allowing INTELSAT satellites already in orbit to be used to their fullest capacity, thereby conserving spectrum and avoiding needless duplication of facilities.
- It will stimulate innovation by allowing COMSAT, with its renowned expertise in the satellite industry, to devise ways of meeting all of its customers' satellite requirements.
- It will increase customer choice by giving consumers another option for meeting their domestic service requirements, particularly where those are mixed with international requirements.
- It will encourage lower prices by introducing COMSAT as another domestic competitor exerting downward pressure on rates.
- It will promote the GII by permitting increased use of the global INTELSAT system.
- It will help alleviate future capacity shortages by providing another source of supply in the event of a launch failure or other catastrophe.

COMSAT clearly has the legal authority to provide U.S. domestic services via INTELSAT in its capacity as U.S. Signatory. Indeed, it did so for almost ten years before U.S. domestic satellites were launched. In the 1970s, the Commission made a policy decision to limit the use of INTELSAT for U.S. domestic service in order to give the nascent domsat industry a chance to develop. However, that policy has fully achieved its purpose. As noted in the NPRM, the domsat industry is now vibrant and

mature, with some 30 satellites in orbit. NPRM at 11. Thus, it is no longer necessary to continue the early protectionist measures for the domsat industry, and it is in the public interest for the Commission to extend its new policy to include COMSAT World Systems. Just as the restrictions on domsats and separate systems are now being eliminated in order to further competition, so should the restrictions on COMSAT's provision of service be eliminated so that customers can use COMSAT for any service they desire. As recognized in the NPRM, customers should be free to make choices, and these choices should not be circumscribed by artificial boundaries.

Moreover, if all of COMSAT's satellite competitors are to be allowed to provide both domestic and international services on a co-primary basis, the FCC's long-established policy of ensuring fair competition requires that COMSAT be allowed to serve users with the same flexibility as the Commission is now proposing for other satellite service providers. There would be obvious market distortions and serious financial repercussions if COMSAT were singled out as the only satellite operator not permitted to offer both domestic and international services.

Like other U.S. service providers, COMSAT has existing customers and potential customers with both domestic and international communications needs, and they too are interested in one-stop shopping. If COMSAT is the only satellite provider

that cannot accommodate such user requirements, it will obviously be at a major competitive disadvantage with respect to other systems. Given the highly competitive nature of today's market for international telecommunications capacity, there is simply no principled basis for treating COMSAT any differently from other U.S. satellite service providers. Indeed, because COMSAT World Systems is limited to the provision of space segment capacity and cannot provide end-to-end service, separate system and domsat competitors will still retain a significant advantage despite application of the new policy to COMSAT.

The Commission's new policy will affect three different types of traffic: purely domestic, purely international, and mixed international/domestic. With respect to purely domestic traffic, COMSAT has relatively little to gain from the proposed change in policy. As the NPRM points out, INTELSAT's satellites are located over the Atlantic, Pacific and Indian Oceans. These are ideal locations for transcontinental service, but are not well-suited for U.S. domestic service. In fact, only two of INTELSAT's orbital locations, 307°E and 310°E, can provide anything close to full-CONUS coverage, and these locations are already in heavy demand both for transatlantic services and for services between North and South America.

The hemi and zone beams that would be used to provide U.S. coverage via INTELSAT are also lower-powered than most domsat

beams, which are optimized for U.S. domestic service. Moreover, unlike most domsats and separate systems, INTELSAT satellites use circular rather than linear polarization. Thus, earth station operators wishing to "point over" from other satellites to INTELSAT satellites would need to retrofit their antenna feeds in order to do so. For these reasons, it is unlikely that there would be great demand for use of INTELSAT satellites to carry purely U.S. domestic traffic.

With respect to purely international traffic, COMSAT clearly has the most to lose as the result of the new policy. While, as noted above, the orbital locations of most international satellites are not ideal for domestic purposes, the converse is not true. The U.S. domestic arc is ideal for service between North and South America, and this is the fastest growing traffic stream for international satellite service. Moreover, the footprints of most domestic satellites already cover all of Central America and the Caribbean, and in some cases these footprints reach deep into South America.

Under the old Transborder policy criteria, domsats were allowed to provide international services where (1) INTELSAT could not provide the service, or (2) it would have been "clearly uneconomical or impractical" to use INTELSAT facilities.² While

²Transponder Satellite Video Services, 88 FCC 2d 258, 287 (1981).

the Commission interpreted these criteria as liberally as possible, they did impose some limits on domsats which will now be removed. Allowing domsats to offer international services on the same basis as separate systems will provide users with a host of new space segment suppliers, including such industry giants as AT&T, Hughes, and GE Americom. These new suppliers, of course, will be in direct competition with COMSAT.

Under the Commission's proposal, each domestic satellite will be allowed to provide unlimited amounts of video and private line service, and up to 1250 circuits of switched-voice service per satellite. Moreover, the 1250-circuit threshold reflected in current U.S. policy will undoubtedly be raised to 8000 circuits per satellite, consistent with the change adopted last year by the INTELSAT Assembly of Parties. NPRM at 12. While it is literally true that the old Transborder policy did not specifically prohibit domsats from providing switched-voice services, it would have been extremely difficult for any domsat operator to demonstrate that INTELSAT could not practically and economically provide international switched-voice services, since that has been its main mission for over thirty years. Thus, the Commission's new policy will make it easier for domsats to provide switched-voice service in competition with COMSAT.

COMSAT envisions that the use of INTELSAT for domestic services will primarily be of interest to those customers that

are already using COMSAT's international services and need limited domestic coverage as part of an integrated service offering. In this regard, the Commission has already proposed to take steps to ensure that separate systems are not disadvantaged vis-a-vis domsats. Domsats, of course, have been permitted to offer transborder services for years. But while separate systems have at least had blanket authority to provide domestic services on an ancillary basis, COMSAT until very recently has had to file case-by-case for authority to provide all such ancillary service. Even today, COMSAT's blanket authority is limited to a single situation: serving Puerto Rico and the U.S. Virgin Islands as part of an otherwise international VSAT network.³ All other applications for offshore and domestic service must still be submitted on a case-by-case basis -- creating obstacles and delay for customers. This disparity must be corrected to ensure that customers can opt to take service from COMSAT to satisfy mixed domestic and international satellite requirements.

III. COMSAT HAS NO MARKET POWER IN INTERNATIONAL COMMUNICATIONS THAT IT CAN LEVERAGE IN THE DOMESTIC MARKET

In response to the Commission's request for comment, certain competitors will inevitably argue that COMSAT should not be allowed to provide domestic service via INTELSAT because that would enable it to leverage, in the U.S. domestic market, its

³Communications Satellite Corporation, 8 FCC Rcd 1578 (1993).

alleged "market power" in the provision of space segment for international communications. However, COMSAT today has no market power in the provision of international space segment capacity to U.S. customers, and certainly any such concerns are alleviated by the fact that the Commission's new policy will introduce powerful satellite operators like AT&T, Hughes and GE Americom into the international market.

As the Commission is aware, COMSAT has submitted (in another proceeding, RM-7913) an extensively researched independent study entitled "Competition in the Market for Trans-Oceanic Facilities-Based Telecommunications Services." That study was prepared by Professor Hendrik S. Houthakker of Harvard University, in consultation with The Brattle Group of Cambridge, Massachusetts.

The Brattle Group Study provides empirical market data to support COMSAT's position not only in RM-7913, but also in this proceeding, and we therefore incorporate it by reference in these comments. To recap, the Study made these important findings:

- COMSAT's current market shares are low and declining;
- The international telecommunications market is growing rapidly, with incumbents and new entrants expanding capacity at a very high rate;
- There is a large amount of idle capacity readily available on facilities competing with COMSAT;
- Effective competition in this industry also takes place in the form of contracting for facilities prior to the time they go into service and from the threat of entry;

- The direct costs of trans-oceanic fiber optic cable and satellite technology are now fully competitive;
- COMSAT's customers are large, sophisticated buyers who in many cases have their own competing facilities; and
- COMSAT has reacted to the competitive pressure by decreasing rates and introducing a variety of new service offerings.

For these reasons, The Brattle Group Study concluded that "COMSAT faces substantial effective competition in all geographical and service market segments from existing and planned fiber optic cables and separate satellite facilities, as well as from the threat of entry."⁴ Thus, while COMSAT continues to be regulated as a monopoly, it no longer has any market power vis-a-vis its intermodal and intramodal competitors. There is no reason, therefore, why COMSAT should not be treated like any other provider of satellite services.

IV. COMSAT MOBILE COMMUNICATIONS SHOULD ALSO BE ALLOWED TO PROVIDE BOTH INTERNATIONAL AND DOMESTIC SERVICES

The points made above with respect to COMSAT World Systems are equally true with respect to COMSAT Mobile Communications (CMC). Allowing CMC to provide both international and domestic service will improve efficiency, increase consumer choice and further all of the other policy objectives identified by the Commission in this proceeding. Moreover, CMC would be unfairly disadvantaged if its domestic competitors were allowed to enter

⁴Brattle Group Study at 3.

the international market while it was barred from providing domestic service.

In this regard, AMSC Subsidiary Corporation (AMSC) recently filed an application to offer international maritime mobile satellite services (MSS) within the "footprint" of its AMSC-1 satellite. File No. ITC-95-280. The authority AMSC requested would allow it to challenge COMSAT for a major component of CMC's maritime revenues, namely in the Caribbean region. In order to allow the public to benefit from full competition for L-band MSS, CMC filed in response its own application to provide domestic aeronautical and land MSS using INMARSAT facilities. File No. ITC-95-341.

These two inextricably related applications address a more narrow set of competitive issues than those raised by this proceeding, and their processing should not be delayed. Accordingly, COMSAT believes that it would not prejudice this proceeding's outcome if both the AMSC and CMC applications were processed while this rulemaking is still outstanding.⁵ However, COMSAT also believes that it would be contrary to the objectives of this proceeding (as well as unlawful on other grounds) if one of these applications were processed, and granted, before the other. The Commission, therefore, should proceed through

⁵Comments of COMSAT Corporation, File No. ITC-95-280 (filed May 11, 1995).

adjudication only if it is prepared to deal with, and grant, both applications at the same time.

V. ALL SATELLITE OPERATORS THAT PROVIDE COMMON CARRIER SERVICES MUST BE CLASSIFIED AS COMMON CARRIERS

Under the Commission's current regulatory scheme, separate systems (and most domsat operators) are classified as non-common carriers. Hence, they do not have to file tariffs with the Commission and are not obligated to serve customers on a non-discriminatory basis. With respect to separate systems, the Commission justified this treatment by pointing out that, under the Executive Branch criteria established in 1984, separate systems were limited to the "sale or long-term lease of transponders or satellite capacity for communications not interconnected with public switched message networks."⁶

In its NPRM, the Commission correctly recognized that subsequent modifications to the so-called "PSTN restrictions" have eroded the basis for classifying separate systems as non-common carriers. With the FCC's adoption of the 1250-circuits-per-satellite threshold (which INTELSAT has now raised to 8000 circuits), the "no-interconnection" restriction has been eliminated for all practical purposes, and the sale or long-term lease requirement has been replaced with the provision that services be provided by "sale or lease." Accordingly, the

⁶Separate Systems Report and Order, 101 FCC 2d 1046 (1985).

Commission now proposes to allow separate systems (and domsats) to elect whether to provide service on a common carrier or non-common carrier basis. NPRM at 16.

COMSAT agrees with the Commission's tentative conclusion. Satellite service providers should be allowed to decide for themselves whether they will provide common carrier or non-common carrier services. However, their regulatory classification must, as a matter of law, be determined by the manner in which their services actually are offered. An operator cannot have it both ways -- providing services for profit to the public at large, and yet "electing" to be regulated as a non-common carrier. "A particular system is a common carrier by virtue of its functions, rather than because it is declared to be so."⁷

Separate systems no longer limit themselves to offering "customized services" or to the sale or long-term lease of transponders as originally contemplated. Instead, they now offer a full range of services to anyone willing to pay the fare -- i.e., on a common carrier basis. Like COMSAT, separate systems offer satellite capacity:

- to carrier and non-carrier customers;
- for voice, data and video;
- on a full-time, part-time or occasional use basis;

⁷NARUC v. FCC, 525 F.2d 630, 644 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976).

- in increments ranging from a single channel to an entire transponder;
- for terms ranging from a few minutes to the life of the satellite; and
- for communications that are both interconnected and not interconnected with the worldwide public-switched network.

Separate systems are obviously providing service for profit, and they consistently hold themselves out to the public at large. Indeed, some even publish rate cards. Yet, today, separate systems are not bound by the rates they publish, but are free to change prices at will and to discriminate among similarly-situated customers. There is no functional difference between the services provided by COMSAT and the services provided by separate systems; indeed, they are indistinguishable from a customer perspective. Accordingly, if an operator elects to provide common carrier-type services, it cannot then negotiate individual deals on an off-tariff basis.⁸ Similarly, if an operator elects to sell capacity on a non-common carrier basis, it cannot hold itself out to the public at large. While relaxation of tariff and other economic regulation is clearly warranted for all satellite service providers, the current asymmetrical regulatory scheme is harshly prejudicial to COMSAT and there is no valid justification for it. The Commission should therefore put an end to this disparate treatment.

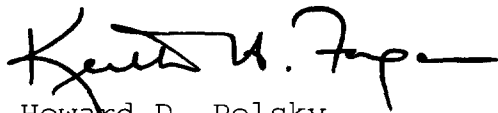
⁸See, e.g., MCI v. AT&T, 114 S. Ct. 2223 (1994); Maislin Industries v. Primary Steel, 497 U.S. 116 (1990).

VI. CONCLUSION

The public interest will clearly be served if COMSAT is allowed to compete fully and fairly with domsats and separate systems. Accordingly, the Commission's proposed policy allowing satellite operators to provide both domestic and international services on a co-primary basis should be extended to COMSAT World Systems. COMSAT Mobile Communications should also be allowed to provide both domestic and international services; however, mobile-satellite issues may be addressed in other proceedings so long as the objectives of this proceeding are not compromised by unequal treatment.

Respectfully submitted,

COMSAT CORPORATION

A handwritten signature in black ink, appearing to read "Keith H. Fagan", is written over the typed name.

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